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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	CC Docket No. 96–98

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

GSA responds to comments addressing the designation of entrance facilities as unbundled network elements ("UNEs"). Based on the comments by many parties, GSA concludes that unbundled access to entrance facilities is vital for competition.

GSA also addresses the pricing rules for entrance facilities. Incumbent LECs assert that these facilities should not be offered under the pricing rules adopted for UNEs because that structure would significantly erode the incumbents' revenues from special access services. However, GSA concurs with competitive LECs and interexchange carriers that the Commission should discount these assertions.

In their comments, several competitive carriers explain that the Commission has already rejected arguments that UNE pricing would impair the ability of local carriers to meet universal service initiatives. In addition, data provided by incumbent LECs show that interstate special access services account for a relatively small part of the total operating revenues of major LECs. Moreover, the LECs' revenues and earnings from other LEC services are increasing rapidly.

GSA also responds to assertions that incumbent LECs should not be permitted to employ UNEs to originate and terminate interexchange messages unless they concurrently provide local exchange services. Competitors demonstrate that constraints are not sound policy and would not promote facilities–based market entry.

Finally, GSA notes that an incumbent LEC identifies several approaches for mitigating any revenue losses that incumbent LECs incur because of bypass. This carrier recommends geographically deaveraged pricing as well as reductions in the disparities in access charges between business and residence lines. GSA urges the Commission to adopt these pro–competitive measures rather than prescribing restrictions on the use of entrance facilities in providing interstate services.

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REPLY COMMENTS
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GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Fourth Further Notice of Proposed Rulemaking ("Further Notice") released on November 5, 1999. The Further Notice seeks comments and replies on issues concerning provision of unbundled network elements ("UNEs") to foster competition for telecommunications services.

I. INTRODUCTION

The Telecommunications Act of 1996 ("Telecommunications Act") placed obligations on incumbent local exchange carriers ("LECs") to share their networks with competitors.[1] In August 1996, the Commission prescribed rules for implementing these unbundling requirements.[2] Challenges to these rules by various parties were

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1 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("Telecommunications Act").

2 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, released August 8, 1996.

consolidated in a proceeding before the U.S. Court of Appeals for the Eighth Circuit. The findings by that court in 1998 were appealed to the U.S. Supreme Court.

On January 25, 1999, the Supreme Court issued its decision in *AT&T v. Iowa Utilities Board,* which affirmed in part and remanded in part the decision of the court below.[3] In that decision, the Supreme Court addressed several aspects of the Commission's interconnection rules, including the designation of UNEs.

On November 5, 1999, the Commission released the *Third Unbundling Order,* which responded to the instructions of the court by giving substance to the "necessary" and "impair" standards in Section 251(d)(2) of the Telecommunications Act.[4] Although the *Third Unbundling Order* prescribed many obligations on incumbent LECs, the Commission deferred consideration of several unbundling issues to the instant proceeding in order to determine how interconnection rules should be applied to "entrance facilities."[5] These facilities are dedicated transport links between the incumbent LECs' wire centers and the points of presence of interexchange carriers.[6]

In the Further Notice, the Commission asks parties to provide their recommendations on issues concerning unbundling of entrance facilities. On January 12, 2000, GSA submitted Comments in response to the Further Notice.

In its Comments, GSA urged the Commission to require incumbent LECs to provide entrance facilities to competitors as UNEs.[7] Also, GSA recommended that the Commission prohibit incumbent LECs from placing any restrictions on the use of

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3 AT&T v. Iowa Utils. Bd., 119 S. Ct. 721 ("*Iowa Utils. Bd.*")

4 *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, Third Report and Order released November 5, 1999 ("*Third Unbundling Order*").

5 *Id.*, para. 489.

6 *Id.*

7 Comments of GSA, pp. 4–7.

entrance facilities by competitive LECs.[8] Moreover, GSA explained that these terms and conditions will not unduly burden incumbent LECs or impair their ability to meet universal service objectives.[9]

More than 20 parties in addition to GSA submitted comments in response to the Notice. These parties include:

- 6 incumbent LECs and organizations of these carriers;
- 13 competitive LECs, other carriers and carrier associations;
- a state regulatory commission; and
- an association of state regulators.

In these Reply Comments, GSA responds to the positions advanced by these parties.

II. THE COMMISSION SHOULD NOT HEED ASSERTIONS THAT CARRIERS MAY REFUSE TO PROVIDE ENTRANCE FACILITIES AS UNBUNDLED NETWORK ELEMENTS.

A. Competitors need unbundled access to entrance facilities in many locations.

Incumbent LECs contend that the Commission should not require them to provide entrance facilities as UNEs. These LECs claim that competitors have or can implement alternative means of access, so that failure to provide entrance facilities as UNEs will not impair their ability to provide services to their own subscribers.

When the Commission initially implemented unbundling requirements in the *Local Competition First Report and Order*, the interoffice facilities connecting LEC switches were designated as required UNEs.[10] Since the primary transport facilities used for switched services have been designated as UNEs, incumbent LECs asserting

8 *Id.*, pp. 10–13.

9 *Id.*, pp. 7–10.

10 *Third Unbundling Order*, para. 318, citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499 ("*Local Competition First Report and Order*"), para. 12.

that entrance facilities should be excluded from unbundling requirements must distinguish the competitive conditions for dedicated services. Although incumbent LECs argue that there are greater levels of competition for dedicated services, their assertions do not support a ruling that these carriers should not be required to unbundle entrance facilities.

For example, BellSouth asserts that unbundling is not necessary. In support of this claim, BellSouth states that the Commission should recognize that fifteen years' of investment by competitive access providers ("CAPS") and competitive LECs permits multiple carriers to offer dedicated services without employing incumbents' facilities.[11] In its comments, however, BellSouth acknowledges that these investment levels are observed not generally, but only "in specific geographic areas."[12] Indeed, BellSouth identifies only four cities in its own operating area — Atlanta, Charlotte, Jacksonville, and Miami — as places where competitors have access to a variety of alternative access facilities.[13]

Similarly, Bell Atlantic observes that competing carriers are now reporting revenues of over $5.6 billion from special access and private line services.[14] With this level of activity, Bell Atlantic asserts that competitive LECs do not need additional means for access to the incumbents' networks.[15] Indeed, according to Bell Atlantic, requirements to provide entrance facilities as UNEs could impair development of

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11 Comments of BellSouth, p. 3.

12 *Id.*

13 *Id.*, p. 10.

14 Comments of Bell Atlantic, p. 3.

15 *Id.*

competition because competitors would have less motivation to construct their own facilities.[16]

Notwithstanding these claims, GSA urges the Commission to conclude that competitors do not have viable alternatives in many places because special access services are geographically concentrated. For example, Bell Atlantic acknowledges that 93 percent of its special access revenues are obtained for facilities terminating at only 20 percent of its central offices.[17] Outside of the metropolitan areas, it is not cost–effective for competitors to replicate the capabilities of the major LECs.

In their own comments, competitive carriers emphasize the importance of access to unbundled entrance facilities. For example, Cable and Wireless explains that it is implementing a two–year program to upgrade, enhance and expand its network in order to provide a full range of advanced voice and data services."[18] This program has required substantial ongoing investments.[19] Nevertheless, the carrier notes that its "ability to maintain and improve its market position will be limited if it does not have unrestricted access to UNEs, alone and in combination, as mandated by the Telecommunications Act of 1996."[20]

Similarly, Global Crossing notes that entrance facilities are vital to interexchange carriers ("IXCs").[21] Global Crossing explains that entrance facilities are basically dedicated transport links that must be provided as UNEs under the

16 *Id.*, pp. 2–3.

17 *Id.*, p. 4.

18 Comments of Cable and Wireless USA, Inc. ("Cable and Wireless"), p. 2.

19 *Id.*

20 *Id.*

21 Comments of Global Crossing Telecommunications ("Global Crossing"), p. 2.

Commission's present rules.[22] Thus, the fundamental question posed by the Commission has already been answered in the affirmative — entrance facilities must be offered on an unbundled basis pursuant to Section 251 of the Telecommunications Act.[23]

GSA concurs with the conclusions articulated by these carriers. Moreover, to ensure that competitors have unrestricted access to these vital facilities, GSA urges the Commission to require incumbent LECs to make these facilities available to competitive LECs as unbundled elements at reasonable rates, terms and conditions.

B. Pricing entrance facilities as UNEs will not impair universal service initiatives.

The Telecommunications Act imposes a duty on incumbent LECs to provide access to UNEs at rates, terms and conditions that are just, reasonable, and non–discriminatory.[24] In the *Local Competition First Report and Order*, the Commission ruled that this directive would be met by pricing all UNEs and interconnection services at their economic costs. Moreover, the Commission adopted a specific approach — total element long–run incremental costs ("TELRIC") — to accomplish this objective.[25] In its remand, the Supreme Court did not disturb the finding that incremental costs are the appropriate pricing standard for UNEs.[26]

Incumbent LECs contend that entrance facilities should not be offered under the pricing rules that the Commission has adopted for UNEs because this practice would erode the incumbents' revenues and impair their ability to support universal service

22 *Id.*

23 *Id.*

24 Telecommunications Act, Section 251(c)(3).

25 *Local Competition First Report and Order*, paras. 618–837.

26 Comments of GSA, p. 6.

initiatives. For example, U S WEST asserts that "permitting the unrestricted conversion of special access to UNEs would have serious universal service consequences."[27]

GTE expands upon this argument by noting that interstate access charges still contain implicit support for universal service.[28] GTE concludes that "artificial reductions" in the prices of dedicated facilities would cause interconnected carriers to shift to "non–support–producing UNE arrangements."[29] According to GTE, these shifts would undermine implicit support and jeopardize universal service.[30]

GSA urges the Commission to discount these assertions. Comments by competitive LECs demonstrate that the Commission should not protect incumbent LECs' special access revenues to the point of impairing competition. For example, Sprint states that "the markets in question — switched access and switched access transport — were opened by the Commission to competition in the early 1990s, which perforce means that there is no special public interest in protecting the incumbent LECs' revenue streams."[31] Moreover, Sprint observes that in opening special access to competition, the Commission rejected claims that this step would threaten universal service.[32] Specifically, Sprint notes that the Commission found no evidence to support the proposition that interstate special access service provides support for residential exchange service in rural areas.[33] Although some costs may be reassigned to the

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27 Comments of U S WEST, p. 2.

28 Comments of GTE, p. 12.

29 *Id.*

30 *Id.*

31 Comments of Sprint Corporation ("Sprint"), p. 8.

32 *Id.*, citing *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1962).

33 *Id.*, at 7381 and 7486.

state jurisdiction as an indirect result of special access competition, "any such cost allocation would not be of sufficient magnitude to undermine universal service."[34]

Global Crossing also urges the Commission to reject claims that a requirement to unbundle entrance facilities will jeopardize universal service. In making this point, Global Crossing states:

> . . . the specter of a "large financial impact on incumbent local exchange carriers" is vastly overstated. Special access revenues account for only a relatively small proportion of interstate access revenues.[35]

Moreover, Global Crossing notes, if requesting carriers are able to substitute UNEs for special access, incumbent LECs will still obtain sufficient revenues to cover their costs for these elements.[36]

GSA concurs with the observations by these competitors. Indeed, GSA explained in its Comments that requirements to unbundle entrance facilities will not burden incumbent LECs.[37] At the outset, GSA noted that revenues from special access services account for only five or six percent of the total operating revenues of Regional Bell Operating Companies ("RBOCs") and other LECs reporting to the Commission.[38] Moreover, GSA noted that the LECs' total revenues are increasing so rapidly that these carriers can absorb significant reductions in revenues for special access services.[39] Furthermore, there is latitude for significant reductions in the LECs'

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34 *Id.*

35 Comments of Global Crossing, p. 4.

36 *Id.*

37 Comments of GSA, pp. 7–9.

38 *Id.*, p. 8.

39 *Id.*, pp. 8–9.

earnings because reports to the Commission by price cap carriers demonstrate that their interstate earnings ratios have increased steadily over the past 10 years.[40]

III. CONTRARY TO RECOMMENDATIONS BY SEVERAL CARRIERS, THE COMMISSION SHOULD NOT PRESCRIBE RESTRICTIONS ON THE USE OF ENTRANCE FACILITIES BY COMPETITIVE LECs.

In the *Third Unbundling Order*, the Commission observed that two incumbent LECs' urged the Commission in *ex parte* filings to limit competitors' use of entrance facilities if they are offered as UNEs.[41] Additional LEC parties responded to the Further Notice by also recommending that the Commission adopt restrictions on the use of UNEs in providing certain interstate services.

For example, SBC contends that the Commission should restrict use of UNEs as substitutes for both special access and private line services.[42] According to SBC, neither the Telecommunications Act nor the Commission's rules preclude limitations on the use of entrance facilities.[43] Therefore, SBC states, the Commission "can and should" take this action to further the goals articulated in the Telecommunications Act.[44]

Similarly, the United States Telecom Association ("USTA") recommends that competitive LECs not be allowed to employ UNEs to originate and terminate message toll traffic unless they provide local exchange services over the same facilities.[45]

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40 *Id.*, p. 9 and *In the Matter of Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94–1, and *Access Charge Review*, CC Docket No. 96–262, Comments of GSA, January 7, 1999, pp. 5–8.

41 *Third Unbundling Order*, para. 483, n. 974, citing Bell South August 9, 1999 *Ex Parte*, and SBC August 11, 1999 *Ex Parte*.

42 Comments of SBC, p. 18.

43 *Id.*, p. 19.

44 *Id.*, p. 18–19.

45 Comments of USTA, p. 14.

According to USTA, this restriction is justified because Congress never intended that incumbent carriers should be required to forego revenues as a condition precedent to ensuring the growth and development of competition in the access market.[46]

GSA disagrees with these assertions. As GSA explained in its Comments, the Commission should not establish limits, or permit incumbent LECs to establish limits, on competitive carriers' use of entrance facilities provided as UNEs. GSA noted that restrictions on competitors' applications or network configurations are outlawed by the Telecommunications Act, prohibited by Commission rules, and harmful to the development of more competition.[47]

Although incumbent LECs focus on their own revenue losses if the Commission does not adopt use restrictions, competitors underscore the harmful effects of such restrictions on all ratepayers. For example, AT&T observes that use restrictions would be inappropriate public policy because:

- constraints would not support requirements to move to cost–based access charges, and would preclude a market–based approach to regulating the telecommunications marketplace;
- limitations would not promote facilities–based market entry; and
- constraints would reinforce the incumbent LECs' ability to frustrate competition in both the exchange access and local exchange markets.[48]

GSA concurs with AT&T that potential financial impacts on incumbent carriers should not override these public policy concerns or the statutory prohibitions against use restrictions.[49]

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46 *Id.*

47 Comments of GSA, p. 10.

48 Comments of AT&T, p. 2.

49 *Id.*

MCI WorldCom ("WorldCom") rebuts USTA's contention that incumbent LECs should not be allowed to employ UNEs to originate and terminate interexchange messages unless they also provide local exchange services over the same facilities. WorldCom notes that the Commission has considered and rejected the proposition that competitive LECs can be prevented from employing UNEs only for originating and terminating exchange access traffic.[50] MCI explains:

> A LEC providing a loop used exclusively to originate and terminate access traffic is providing a "telecommunications service" every bit as much as a LEC providing the same loop for commingled access and local traffic.[51]

Moreover, MCI explains, a prohibition against using entrance facilities to provide access services is not necessary to protect implicit universal service subsidies, as incumbent LECs assert.[52]

In the *Access Charge Reform Order*, the Commission took pro–competitive steps to foster competition for all telecommunications services by prescribing policies to align interstate access charges with the underlying cost structures.[53] The Commission stated that as an established practice, special access services should not subsidize other services.[54]

In initiating access reform, the Commission anticipated that new rate structures and the development of more competition would drive access charges to competitive

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50 Comments of WorldCom, p. 7, citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, released August 8, 1996.

51 *Id.*

52 *Id.*, p. 9.

53 *In the Matter of Access Charge Reform*, CC Docket No. 96–262 *et al.*, First Report and Order, released May 16, 1997 ("*Access Charge Reform Order*"), para. 404.

54 *Id.*

levels.[55] GSA concurs with WorldCom that a use restriction which deters competition in access services for the purpose of preserving supra–competitive access charges is contrary to the Commission's pro–competitive initiatives.

IV. THE COMMISSION SHOULD ADOPT SUGGESTIONS BY AN INCUMBENT CARRIER FOR PROCEDURES TO MITIGATE POTENTIAL REVENUE LOSSES FROM BYPASS OF ACCESS SERVICES.

In comments responding to the Further Notice, U S WEST identifies ways to mitigate revenue losses from bypass if entrance facilities are offered as UNEs. Although U S WEST does not support unbundling of entrance facilities, as previously discussed in these Comments, the LEC urges the Commission to adopt two related regulatory reforms if the Commission takes this step.[56]

U S WEST suggests that with unbundling of entrance facilities, incumbent LECs should be allowed to geographically deaverage their access charges.[57] Also, under the same conditions, the carrier suggests that the Commission eliminate the disparities between subscriber line charges ("SLCs") and presubscribed interexchange carrier charges ("PICCs") for residential and business multi–line customers.[58] U S WEST explains that these steps will help incumbent LECs to respond to arbitrage opportunities that arise from provision of entrance facilities as UNEs.[59]

GSA has previously supported both of the steps that are recommended by U S WEST. For example, in August 1999 the Commission released its Fifth Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96–262 *et al.* to

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55 *Id.*, para. 48.

56 Comments of U S WEST, pp. 24–25.

57 *Id.*, p. 25.

58 *Id.*

59 *Id.*

obtain parties' views on issues concerning pricing flexibility for incumbent LECs. In its Comments and Reply Comments responding to the Notice, GSA urged the Commission to allow incumbent LECs to deaverage their access charges if their charges for UNEs were also deaveraged.[60] Also, GSA recommended that the identical pricing zones be used for access charges and UNEs to ensure that the zones are cost–based and not circumscribed to limit areas of emerging competition.[61]

Moreover, in several submissions to the Commission in the past year, GSA has addressed the need to reduce or eliminate disparities in the monthly access charges for different types of lines as a step in aligning access charges with the structure of costs.[62] In those comments, GSA explained that while there are no differences in the costs of access facilities for different groups of subscribers, the access charges for business multi–lines have always been much greater than the charges for other types of lines.[63]

For example, the SLC ceiling for primary residential and single business lines is \$3.50 monthly, but the ceiling is nearly three times as large — \$9.20 monthly— for business multi–lines.[64] Similarly, the PICC ceilings for business multi–lines are much greater than for other types of lines. For example, the current ceilings are \$1.04 for residential and single business lines, \$2.53 for non–primary residential lines, and \$4.31 for business multi–lines.[65]

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60 *In the Matter of Access Charge Reform*, CC Docket No. 96–262 *et al.*, Comments of GSA, October 29, 1999, pp. 3–4, and Reply Comments of GSA, November 29, 1999, p. 4.

61 *Id.*, Reply Comments of GSA, p. 5.

62 *Id.*, Comments of GSA, p. 10; and *In the Matter of Low–Volume Long Distance Users*, Comments of GSA, November 12, 1999, p. 8.

63 *In the Matter of Low–Volume Long Distance Users*, Comments of GSA, November 12, 1999, pp. 8–9.

64 *Id., Notice, para. 8.*

65 *Id.*, para. 9.

As U S WEST explains in its comments, "multi–line business customers effectively subsidize the local rates of residential customers."[66] GSA strongly agrees that the Commission should remedy this infirmity. Indeed, the Commission can reduce the cross–subsidy among access facilities and at the same time ameliorate opportunities for arbitrage by curbing disparities in the monthly access charges when requiring incumbent LECs to unbundle their entrance facilities.

66 Comments of U S WEST, p. 25.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

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February 18, 2000

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I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 18th day of February, 2000, by hand delivery or postage paid to the following parties.

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